

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR MORGAN
STANLEY ABS CAPITAL I INC. TRUST
2007-NC2 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-NC2,
Plaintiff,

-v.-

MICHAEL J. O'DONNELL; HSBC NEVADA,
NA FKA HOUSEHOLD BANK; WEST
SUBURBAN BANK,
Defendant

1 : 12 CV 4128

JUDGE Robert W. Gettleman

MOTION FOR JUDGMENT ON COUNTS II, III, AND IV

NOW COMES, Plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORGAN STANLEY ABS CAPITAL I INC. TRUST 2007-NC2 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-NC2, by and through its attorneys, Potestivo & Associates, P.C., and moves this Honorable Court for an Order reforming the Mortgage, Assignment of Mortgage and Warranty Deed to include the correct the legal description, and in support thereof states as follows:

1. That Plaintiff and Defendant(s) Michael J. O'Donnell entered into a mortgage contract dated November 10, 2006 which was recorded January 19, 2007 as document number R2007011941 in Will County Recorder of Deeds affecting the property commonly known as 32215 S. Route 53, Wilmington, IL 60481.
3. That due to a scrivener's error, the mortgage contained an incorrect legal description.

The incorrect legal description is:

PARCEL I: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATE ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE 100 FEET, THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF THE SAID HIGHWAY, 690 FEET, THENCE SOUTHEASTERLY 100 FEET PARALLEL TO THE SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING.

PARCEL II: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE CENTER OF

SAID SECTION 35, THENCE WEST ALONG THE CENTER LINE 2351.2 FEET TO THE INTERSECTION WITH THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, 871 FEET TO THE POINT OF BEGINNING, THENCE NORTHEASTERLY ALONG THE CENTER LINE, 50 FEET, THENCE AT RIGHT ANGLES IN A SOUTHWESTERLY DIRECTION 50 FEET, THENCE AT RIGHT ANGLES IN A NORTHWESTERLY DIRECTION 690 FEET TO THE POINT OF BEGINNING.

PARCEL III: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS; BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, A DISTANCE OF 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, 870.2 FEET TO THE POINT OF BEGINNING, THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE .8 FEET, THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY 690 FEET, THENCE SOUTHWESTERLY .8 FEET PARALLEL TO THE SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING, ALL IN WILL COUNTY, ILLINOIS.

4. That the correct legal description should be:

PARCEL I

THAT PART OF THE NORTHWEST ¼ OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35 A **DISTANCE OF 2351.2 FEET** TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE **770.2 FEET TO THE POINT OF BEGINNING** THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE 100 FEET THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY, 690 FEET THENCE **SOUTHWESTERLY** 100 FEET PARALLEL TO SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO PLACE OF BEGINNING.

PARCEL II

THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT CENTER OF SAID SECTION 35, THENCE WEST ALONG THE CENTER LINE 2351.2 FEET TO ITS INTERSECTION WITH THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66; THENCE NORTHEASTERLY ALONG SAID CENTER LINE 871 FEET TO THE PLACE OF BEGINNING; THENCE NORTHEASTERLY ALONG SAID CENTER LINE 50 FEET; THENCE AT RIGHT ANGLES IN A **SOUTHEASTERLY DIRECTION 690 FEET** THENCE AT RIGHT

ANGLES IN A SOUTHWESTERLY DIRECTION, 50 FEET THENCE AT RIGHT ANGLES IN A NORTHWESTERLY DIRECTION 690 FEET TO THE PLACE OF BEGINNING.

PARCEL III

THAT PART OF THE NORTHWEST ¼ OF SAID SECTION 35 TOWNSHIP 33 NORTH RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER LINE OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, A DISTANCE OF 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE 870.2 FEET TO THE PLACE OF BEGINNING; THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE .8 FEET THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY, 690 FEET, THENCE SOUTHWESTERLY .8 FEET PARALLEL TO SAID HIGHWAY THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING.

5. It was Plaintiff and Defendant(s) Michael J. O'Donnell's intent to create a valid mortgage contract encumbering the correct legal description as referenced above.
6. That the Assignment of Mortgage Plaintiff seeks to reform was recorded on April 20, 2012 in Will County Recorder of Deeds as document number R2012046194.
7. That due to a scrivener's error, the assignment of mortgage contained an incorrect legal description.

The incorrect legal description is:

PARCEL I: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATE ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, A DISTANCE OF 770.2 FEET TO THE POINT OF BEGINNING; THENCE NORTHEASTERLY, ALONG SAID HIGHWAY CENTER LINE 100 FEET, THENCE IN A SOUTHWESTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF THE SAID HIGHWAY, 690 FEET, THENCE SOUTHWESTERLY 100 FEET PARALLEL TO THE SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING.

PARCEL II: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, 871 FEET TO THE

POINT OF BEGINNING, THENCE NORTHEASTERLY ALONG THE CENTER LINE, 50 FEET, THENCE AT RIGHT ANGLES IN A SOUTHEASTERLY DIRECTION 690 FEET, THENCE AT RIGHT ANGLES IN A SOUTHWESTERLY DIRECTION 50 FEET, THENCE AT RIGHT ANGLES IN A NORTHWESTERLY DIRECTION 690 FEET TO THE POINT OF BEGINNING.

PARCEL III: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, A DISTANCE OF 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, 870.2 FEET TO THE POINT OF BEGINNING, THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE .8 FEET, THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY 690 FEET, THENCE SOUTHWESTERLY .8 FEET PARALLEL TO THE SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING, ALL IN WILL COUNTY, ILLINOIS.

8. That the correct legal description should be:

PARCEL I

THAT PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35 **A DISTANCE OF** 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE 770.2 FEET TO THE POINT OF BEGINNING THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE 100 FEET THENCE IN A **SOUTHEASTERLY** DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY, 690 FEET THENCE SOUTHWESTERLY 100 FEET PARALLEL TO SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO PLACE OF BEGINNING.

PARCEL II

THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: **COMMENCING** AT CENTER OF SAID SECTION 35, THENCE WEST ALONG THE **CENTER LINE 2351.2** FEET TO **ITS INTERSECTION WITH** THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66; THENCE NORTHEASTERLY ALONG SAID CENTER LINE 871 FEET TO THE PLACE OF BEGINNING; THENCE NORTHEASTERLY ALONG SAID CENTER LINE 50 FEET; THENCE AT RIGHT ANGLES IN A SOUTHEASTERLY DIRECTION 690 FEET THENCE AT RIGHT ANGLES IN A SOUTHWESTERLY DIRECTION, 50 FEET THENCE AT RIGHT ANGLES IN A NORTHWESTERLY DIRECTION 690 FEET TO THE PLACE OF BEGINNING.

PARCEL III

THAT PART OF THE NORTHWEST ¼ OF SAID SECTION 35 TOWNSHIP 33 NORTH RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER LINE OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, A DISTANCE OF 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE 870.2 FEET TO THE PLACE OF BEGINNING; THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE .8 FEET THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY, 690 FEET, THENCE SOUTHWESTERLY .8 FEET PARALLEL TO SAID HIGHWAY THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING.

9. That it was Plaintiff and Defendant(s) Michael J. O'Donnell's intent to create a valid mortgage contract encumbering the correct legal description as referenced above.
10. That the Warranty Deed Plaintiff seeks to reform was recorded on September 15, 2005 in Will County Recorder of Deeds as document number R2005159186.
11. That due to a scrivener's error, the Warranty Deed contained an incorrect legal description.

The incorrect legal description is:

PARCEL I: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATE ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, A DISTANCE OF 770.2 FEET TO THE POINT OF BEGINNING; THENCE NORTHEASTERLY, ALONG SAID HIGHWAY CENTER LINE 100 FEET, THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF THE SAID HIGHWAY, 690 FEET, THENCE SOUTHWESTERLY 100 FEET PARALLEL TO THE SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING.

PARCEL II: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, 871 FEET TO THE POINT OF BEGINNING, THENCE NORTHEASTERLY ALONG THE CENTER LINE, 50 FEET, THENCE AT RIGHT ANGLES IN A SOUTHEASTERLY DIRECTION 690 FEET, THENCE AT RIGHT ANGLES IN A SOUTHWESTERLY

DIRECTION 50 FEET, THENCE AT RIGHT ANGLES IN A NORTHWESTERLY DIRECTION 690 FEET TO THE POINT OF BEGINNING.

PARCEL III: THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS; BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE, 870.2 FEET TO THE POINT OF BEGINNING, THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE .8 FEET, THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF HIGHWAY 690 FEET, THENCE SOUTHWESTERLY .8 FEET PARALLEL TO THE SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING, ALL IN WILL COUNTY, ILLINOIS.

12. That the correct legal description should be:

PARCEL I

THAT PART OF THE NORTHWEST ¼ OF SECTION 35, IN TOWNSHIP 33 NORTH AND IN RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35 **A DISTANCE OF** 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE 770.2 FEET TO THE POINT OF BEGINNING THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE 100 FEET THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY, 690 FEET THENCE SOUTHWESTERLY 100 FEET PARALLEL TO SAID HIGHWAY, THENCE NORTHWESTERLY 690 FEET TO PLACE OF BEGINNING.

PARCEL II

THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, IN TOWNSHIP 33 NORTH RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: **COMMENCING** AT CENTER OF SAID SECTION 35, THENCE WEST ALONG THE **CENTER LINE 2351.2 FEET TO ITS INTERSECTION WITH THE** CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66; THENCE NORTHEASTERLY ALONG SAID CENTER LINE 871 FEET TO THE **PLACE** OF BEGINNING; THENCE NORTHEASTERLY ALONG SAID CENTER LINE 50 FEET; THENCE AT RIGHT ANGLES IN A SOUTHEASTERLY DIRECTION 690 FEET THENCE AT RIGHT ANGLES IN A SOUTHWESTERLY DIRECTION, 50 FEET THENCE AT RIGHT ANGLES IN A NORTHWESTERLY DIRECTION 690 FEET TO THE PLACE OF BEGINNING.

PARCEL III

THAT PART OF THE NORTHWEST ¼ OF SAID SECTION 35 TOWNSHIP 33 NORTH RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER LINE OF SAID SECTION 35, THENCE WEST ALONG THE EAST AND WEST CENTER LINE OF SAID SECTION 35, A **DISTANCE OF** 2351.2 FEET TO THE CENTER LINE OF THE HIGHWAY KNOWN AS ILLINOIS ROUTE 4 OR ALTERNATE UNITED STATES ROUTE 66, THENCE NORTHEASTERLY ALONG SAID CENTER LINE 870.2 FEET TO THE PLACE OF BEGINNING; THENCE NORTHEASTERLY ALONG SAID HIGHWAY CENTER LINE .8 FEET THENCE IN A SOUTHEASTERLY DIRECTION AT RIGHT ANGLES TO SAID CENTER LINE OF SAID HIGHWAY, 690 FEET, THENCE SOUTHWESTERLY .8 FEET PARALLEL TO SAID HIGHWAY THENCE NORTHWESTERLY 690 FEET TO THE POINT OF BEGINNING.

13. That on information and belief, it was the intent of the prior owners of the property to transfer the property described in the above-referenced correct legal description to Michael J. O'Donnell.

WHEREFORE, Plaintiff prays as follows:

- a. That this court enter an order reforming the mortgage, assignment of mortgage and warranty deed which is the subject matter of this action to correct the legal description, and
- b. Such other and further relief as the Court deems just.

By: /s/ Megan Christine Adams

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